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have gone further than to decide that since the defendants were "telephone companies" they automatically, as it were, fell within the prohibition of the statute.

M. McL.

ADMISSIBILITY IN EVIDENCE OF A PLEA OF GUILTY AFTER ITS WITHDRAWAL.—In a recent decision, (*State v. Carta*, 96 Atl. 411) the Supreme Court of Errors of Connecticut has held that a plea of guilty is admissible in evidence after its withdrawal. The trial court permitted the state in the presentation of its case in chief to introduce in evidence the record of the superior court showing that the accused had pleaded guilty to the same information on which he was being tried, and that subsequently, by leave of the court, he had withdrawn that plea and entered a plea of not guilty. To this the accused objected because the former plea had been entered through a misunderstanding between him and the state's attorney and because it was immaterial and injurious to his rights. The upper court held—two justices dissenting—that this was not error and that the fact that a plea of guilty had originally been entered by the accused could be shown as being inconsistent with his later claim of innocence and should be treated as an extrajudicial confession or admission.

Regarding this holding in the light of the few cases in which the question has been presented for the decision of a court, there would seem to be no sound basis for the charge made in the minority opinion that it is "contrary to the law." In the case of *State v. Meyers*, 99 Mo. 107, 12 S. W. 516, the defendant pleaded guilty, but this plea the court refused to receive and it was not entered of record. At the trial, the prosecution was permitted, over the objection of the defendant's counsel, to introduce the deputy clerk and others to prove these facts. This was held to be error, but the upper court, in the course of its opinion, said, "Such testimony should not have been admitted. The confession being what is termed 'a plenary judicial confession,' that is, a confession made before a tribunal competent to try him, was sufficient whereon to found a conviction. * * * No one would contend that, if the plea of guilty had been entered of record, such plea could have been received in evidence against the defendant, and yet the same principle is involved whether the plea actually go upon record or not; in either case, it must, if received in evidence, be *conclusive* of the defendant's guilt. * * * By refusing the plea and granting the defendant a trial, this of necessity meant *a trial* with the issues of fact to be determined by the jury, and not to be determined by the previous plea of the defendant, which admitted all that the state desired to prove." Clearly, the court treats the evidence which was received as a judicial confession with its conclusive effect.

In *People v. Ryan*, 82 Cal. 617, 23 Pac. 121, the people were allowed, over the defendant's objection, to introduce in evidence his plea of guilty in the same cause before the same court, after by permission of the court his plea of guilty had been withdrawn according to the provision of the penal code. This was held to be error. The court said, "The case stands thus, without the evidence of a withdrawn plea of guilty, for which, by authority of law and the court, a plea of not guilty was 'substituted,' the defendant could not

have been legally proven or found to be guilty. Can it be that a privilege thus conceded to a defendant of *substituting* one plea for another is to have the inevitable effect of defeating the whole object of the 'substituted' plea? * * * We cannot agree that, upon principle, when a plea is withdrawn, and another legally *substituted* therefor, the one withdrawn can be introduced in evidence to nullify any defense under the last plea, which would be the practical result in this case of such a doctrine." Here, also, the court obviously regards the evidence received as a judicial confession and as conclusive evidence of the defendant's guilt. These cases are not, therefore, in conflict with the holding in the instant case wherein the evidence of the former plea was admitted as and given the same weight as an extrajudicial confession, and the court says, "Such an admission or confession is not conclusive and unless further proof to establish the *corpus delicti* is offered, is not sufficient to justify a conviction.

In *Commonwealth v. Irvine*, 8 Dana (38 Ky.) 30, the defendant having come into court and confessed the offense charged, the court rendered judgment against him. This judgment was afterwards reversed and the cause remanded and the defendant entered a plea of not guilty. The defendant's confession of guilt was offered in evidence on the part of the commonwealth but, being objected to, was rejected by the court as inadmissible. This was held to be error and the court said, "By joining issue on that plea, the commonwealth waived the right of limiting the inquiry merely to the amount for which judgment should be rendered on the confession and opened to the jury the question of the defendant's guilt or innocence. But it does not follow that this waiver of the conclusive effect of the defendant's confession on the record, either annulled the confession itself or took from it its entire force and effect as evidence of the fact confessed. The record is conclusive evidence of the fact that the defendant had confessed his guilt in court. And if, as is certainly the case, parol evidence of such a confession made out of doors would, in the absence of proof tending to show that it had been improperly obtained, be admissible in evidence to establish guilt, we think it unquestionable that the record of a confession in court, unimpeached as to the manner of its procurement, should be admitted. But the estoppel being waived by the issue, the effect of the confession as proof of guilt, like that of other evidence, is subject to be repelled, and is, from the nature of the proceedings, submitted to the judgment of the jury." And in *People v. Jacobs*, 151 N. Y. Supp. 522 it was held, "There was no error in receiving testimony of a prior plea of guilty. Defendants had so pleaded, although thereafter, on their motion, the county judge had reversed this judgment and given them a new trial. The voluntary plea of guilty at the prior hearing was an admission of the failure to take out a license, which with the other evidence, was properly left to the consideration of the jury." These decisions would seem to support the decision in the instant case. Also it is a familiar rule that a plea of guilty made by the defendant at a preliminary examination is admissible as a confession against him on trial had on a subsequently entered plea of not guilty. *Green v. State*, 40 Fla. 474, 24 So. 537; *State v. Briggs*, 68 Ia. 416, 27 N. W. 358; *Rector v. Commonwealth*, 80 Ky. 468; *Commonwealth v. Brown*, 150 Mass. 330, 23 N. E. 49; *Rice v. State*, 22 Tex. App. 654, 3 S. W. 791.

On principle also the decision in the principal case would seem to be sound. The plea of guilty is a judicial confession; and so long as it stands, is conclusive evidence of the defendant's guilt. It is "conviction." This being its effect the court will scrutinize it closely and may, in the exercise of its sound discretion, refuse to enter the plea of record, or once it is so entered, allow it to be withdrawn. In deciding that the accused should be allowed to withdraw his plea, the court merely declares that it should not be received as a judicial confession; but, as was said in the instant case, the withdrawal of the plea withdraws the evidence of conviction, but it does not withdraw the fact that such a plea was entered. This fact remains; it is a confession of guilt and the question which now arises is whether or not this fact is admissible in evidence against the accused. If it meets with the requirements of an extrajudicial confession; i. e., unless there was such inducement that there was a fair risk of a false confession (WIGMORE, § 824), there would seem to be no valid reason why it should not be admitted and given force and effect as such, not as conclusive proof of the guilt of the accused, but to support or be supported by the other proof to establish the *corpus delicti*, as being inconsistent with his later claim of innocence. Of course, the accused has the right to explain his former plea of guilty as he has the right to explain any other extrajudicial confession and he may thus protect himself in so far as he is ever able to do so from its injurious effect. No greater burden is put upon him and he has the same opportunity to prevent the admission of this confession as he has in the case of any extrajudicial confession if it does not meet with the requirements of such a confession.

Nor does the admission in evidence against the accused of his withdrawn plea render nugatory those statutes which make this withdrawal a matter of right or the ruling of the court where withdrawal is discretionary with it. So long as it stands, the plea of guilty "is conviction," *State v. Willis*, 71 Conn. 293, 41 Atl. 820, and, as has been said, the withdrawal of the plea is a withdrawal of the evidence of conviction, whereupon the accused may enter a plea of not guilty and have a trial of the issues involved. And since the confession when introduced in evidence is not conclusive and is not sufficient to justify conviction unless there is some other proof of the *corpus delicti*, this is surely a substantial right which is secured to the accused. All in all, it is difficult to see just how the accused is unjustly injured or prejudiced or how he would be unduly constrained to allow his plea of guilty to stand by giving to the withdrawn plea of guilty the force and effect which is accorded to it by the decision of the Connecticut Court in the instant case. W. F. W.

WHAT CONSTITUTES "DOING BUSINESS" WITHIN A STATE BY A FOREIGN CORPORATION.—Defendant corporation, organized under the laws of New Jersey, held its meetings and kept its bank account in the state of Pennsylvania. Its purpose was to purchase and deal in stocks and bonds issued by Pennsylvania corporations. Among other things it issued bonds of its own which it secured with the bonds and stock of the Pennsylvania corporations. The treasurer resided in Pennsylvania, but the company paid the interest on its bonds